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August 26, 2022

Magistrate Judge Roanne L. Mann
United States District Court Judge
U.S. Eastern District, New York
225 Cadman Plaza East
Brooklyn, NY 11201
VIA ECF Filing

RE: Brainwave Science, Inc. v. Arshee, Inc. et al
Case Number: 1:21-cv-04402-BMC

Dear Judge Mann,

The undersigned represents Brainwave Science, Inc. (“Brainwave”) in the above-captioned matter. I am writing in follow up to Defendant Farwell’s August 23, 2022 affirmation to the Court that he has complied with the Court’s Orders to provide Plaintiff with outstanding discovery (ECF #81).

The responses provided by Defendant Farwell within his August 23, 2022 submission, include numerous documents or other files (including copies of court pleadings and documents prepared by Defendant Farwell or other persons in anticipation of litigation) which appear to be entirely non-responsive to Plaintiff’s Disclosure Demands. Furthermore, a number of the other provided documents/files appear to be potentially responsive but make no reference to which Demands, if any, the documents/files are responsive.

Defendant Farwell’s August 23, 2022 responses to Plaintiff’s October 19, 2021 Disclosure Demands raise further claims of “attorney client privilege” regarding Defendant Farwell’s communications with the University of Canterbury. Plaintiff’s Complaint alleges that Defendant Farwell distributed copies of a system, incorporating Plaintiff’s Trade Secrets, to the Clinical Legal Studies Department at University of Canterbury, New Zealand (ECF #9 at ¶28). Defendant Farwell’s October 2019 collaboration with the University of Canterbury, New Zealand, wherein he provided researchers with access to version(s) P300-related computer systems, is well-documented in New Zealand local media and acknowledged by Defendant Farwell himself. (ECF #66-3, Page 3, Lines 15-25).

Plaintiff’s October 19, 2021 Disclosure Demands requested copies of all communications (written, electronic and/or otherwise) between Defendant Farwell and the University of

Canterbury. Within his response, provided over ten months after Plaintiff's request, Defendant Farwell issued a blanket refusal to provide responses to Plaintiff's request, asserting that:

My only contact with the University of Canterbury is with attorney Robin Parsons. I have been in legal consultations with attorney Robin Parsons, who is a professor of law at the University of Canterbury. In addition to being a professor of law, he is a world-class practicing attorney. He is licensed not only in New Zealand but also internationally and in several other countries where I require legal advice, including South Africa. My communications with Mr. Parsons are under attorney-client privilege.

Defendant Farwell's assertion of "attorney client privilege" regarding his communications with University at Canterbury and/or Professor Robin Parsons is unsupported in fact and law and in violation of Local Rule 26.2(1-2). Neither Professor Parsons' status as a licensed attorney within New Zealand, nor any past or present relationship with Defendant Farwell as a legal advisor, renders his communications with him which relate to his well-publicized P-300-related joint research/projects, with Professor Parsons, individually or in his capacity as a representative of the University of Canterbury, subject to attorney client privilege.

Pursuant to Local Civil Rule 37.3(a), the undersigned has contemporaneously reached out to Defendant Farwell in order to resolve the issues set forth herein. Absent an alternative direction from the Court, in the event that these issues cannot be resolved on or before Friday, September 2, 2022, the undersigned will request Court intervention pursuant to Local Civil Rule 37.3(c).

Thank you for your time and consideration of the forgoing. The undersigned remains available at the Court's convenience.

Respectfully,

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